

The 30th May, 1985

No. 9/5/84/84-6 Lab./4157.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Goodyear India, Ltd., Ballabgarh.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 170/1982.

Between

SHRI SOHAN PAL, WORKMAN AND THE MANAGEMENT OF M/S. GOOD YEAR INDIA LTD.,
BALLABGARH

Present:—Shri S.S. Gupta for the workman.
Shri Sat Pal for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Sohan Lal, workman and the Management of M/s. Goodyear India Ltd., Ballabgarh, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Sohan Pal was justified and in order ? If not, to what relief is he entitled ?

2. It may be mentioned that notices were issued to both the parties. The claimant in his claim statement, dated 15th July, 1982, alleged that he was working with the respondent. since 28th April, 1962 as Raw Material Handler and was drawing Rs. 1,000/- per month. It was then alleged that his services were terminated with effect from 2nd May, 1981 in an illegal manner and that the enquiry held against him was neither fair nor proper and that no second show cause notice was given to him. It was further alleged that the punishment given to the claimant was highly disproportionate to the nature of the charges. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The Management in their written statement dated 20th September, 1982, pleaded that on 2nd May, 1981, the claimant was on duty in his first shift and that after completion of his duty at about 4.30 p.m. the workman was caught at the main gate taking out of the premises dishonestly the goods belonging to the Management and that during the search by the Security Personnel, packing asbestos size 5/16"—2.5 mtrs. approximately and 56 sheets of duplicating paper were recovered. It was then alleged that a domestic enquiry was held against the claimant in which he participated. It was then pleaded that the Enquiry Officer in his report dated 14th September, 1981, held the claimant guilty of the charges and that the Management dismissed the claimant,—vide letter dated 29th October, 1981.

4. The claimant in his rejoinder, dated 29th October, 1982 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed:

(1) Whether the domestic enquiry was fair and proper? OPM.

(2) Whether the termination of service of Shri Sohan Pal was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the Management has examined one witness and documents, Ex. M-1 to M-7, have been tendered into evidence. The claimant appeared in the witness box as WW-1 and has tendered into evidence documents, Ex. W-1 to W-5. After going through the entire evidence and hearing both the representatives of the parties, my findings on the above issues are as under:—

Issue No. 1.

7. The Management has examined Shri Jai Parkash Kasana, MW-1 who stated that he was appointed Enquiry Officer and held the domestic enquiry against the claimant and that Ex. M-1 contained the day to day proceedings of the enquiry. He further stated that the claimant participated in the enquiry fully and he gave him full opportunity to defend himself and also advised him to bring one of his co-workman to assist him in the enquiry. He further stated that he was given full opportunity to cross-examine the witnesses. He further stated that the claimant signed all the proceedings except the proceedings held on 1st July, 1981 which were held in his presence

and that these proceedings were read over and explained to the claimant in presence of an independent witness, but he refused to sign the proceedings. He further stated that the copy of these proceedings was given to him,—*vide* letter Ex. M-2. He also stated that the copy of the proceedings dated 7th July, 1981 was delivered to the claimant,—*vide* letter Ex. M-3. He further stated that the letters Ex. M-4 to M-6 were delivered to the claimant and that Ex. M-7 was his enquiry report.

8. Shri Sohan Pal claimant (WW-1) stated that the enquiry was held against him, but no witness was examined in his presence and that no opportunity was given to cross examine any witness. He further stated that day to day proceedings were not recorded in his presence, but his signatures were obtained in the end. He further stated that the Enquiry Officer never asked him to bring his representative. He also stated that he was acquitted in the criminal case copy Ex. W-5. The documents Ex. W-1 to W-4 have been proved by him.

9. A perusal of the above evidence would show that the charge against the claimant was that he was caught at the main gate of the factory while taking out the packing asbestos 5/16" into 2.5 meters and 56 duplicating papers. It may be mentioned that the charge also related to the possession of 10 grams opium, but the claimant was acquitted in the opium case by the Learned Judicial Magistrate 1st Class, Faridabad,—*vide* copy of judgement Ex. W-5. The Enquiry Officer examined Mr. R.C. Malhotra, Mr. Tula Ram and Mr. P.P. Singh who supported the case of the management. The claimant himself appeared before the Enquiry Officer and examined Shri Puran Chand. The Enquiry Officer considered oral as well as documentary evidence and found the claimant guilty of the charges levelled against him regarding taking out of packing asbestos and 56 sheets of duplicating papers. The Enquiry Officer has given the detailed reasons for coming to this conclusion and also considered the evidence led by the claimant in which he took the plea that he was taking out the duplicating paper to wrap the chapatis being waste material while the asbestos was put in his tiffin by some body to implicate him in the case. The report of the Enquiry Officer in this respect does not call for interference because the same is based on evidence.

10. It was argued that the claimant was not given full opportunity to cross examine the witnesses. The argument is without any force because all the three witnesses produced by the Management were cross examined by the claimant. It was then argued that the claimant was not given full opportunity to produce his defence evidence. The argument is devoid of any force because the proceedings, Ex. M-1 go to show that the claimant examined himself and also produced Shri Puran Chand and on 13th August, 1981, he stated that he did not want to produce any further witness. Consequently, he was given full opportunity to lead defence evidence. It was further argued that the claimant was not permitted to bring his representative to assist him in the enquiry. The enquiry proceedings, Ex. M-1 show that the claimant was asked by the Enquiry Officer on 1st July, 1981 to bring his representative. The claimant therefore, did not avail of the opportunity given to him in this respect.

11. In view of the above discussion, it is held that the enquiry was fair and proper. The issue is decided accordingly in favour of the management.

Issue No. 2.

12. It was argued by the representative of the workman that the claimant was a first offender and keeping in view the charges against him, the punishment of dismissal given to the claimant was highly disproportionate to the charges levelled against him. The claimant has been acquitted in the opium case by the learned Judicial Magistrate 1st Class as already mentioned above. He is a first offender. For recovery of packing asbestos and 56 sheets of duplicating papers, the punishment of dismissal awarded to the claimant is disproportionate to the charge levelled against him. The ends of justice would, therefore, be met if the claimant is reinstated by setting aside the order of dismissal dated 29th October, 1981, but, for the misconduct, the claimant is not entitled to backwages. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated 13th May, 1985.

Endst. No. 405, dated 13th May, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,

Industrial Tribunal Haryana,
Faridabad.